

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case Number 11-20594
Honorable David M. Lawson

GERALD LEE DUVAL, JR and JEREMY
DUVAL,

Defendants.

**ORDER DENYING DEFENDANTS' MOTION FOR EXTENSION OF TIME
TO FILE NOTICE OF APPEAL**

The matter is before the Court on the defendants' motion for extension of time to file notice of appeal. The defendants were convicted by a jury of conspiracy to manufacture more than 100 marijuana plants, manufacturing more than 100 marijuana plants with intent to distribute them, controlling and maintaining a place for the purpose of distributing marijuana, and manufacturing marijuana plants with intent to distribute them. The jury returned its verdict on April 20, 2012. The Court has not sentenced the defendants yet, nor has it entered judgment.

Federal Rule of Appellate Procedure 4(b), which governs appeals in criminal cases, states that "a defendant's notice of appeal must be filed in the district court within 14 days after the later of: (i) the entry of either the judgment or the order being appealed; or (ii) the filing of the government's notice of appeal." Fed. R. App. P. 4(b). The defendants do not need an extension of time to file a notice of appeal because the time for filing the notice has not occurred yet. Fed. R. App. P. 4(b); *United States v. Wrice*, 954 F.2d 406, 408 (6th Cir. 1992) (explaining that "the latest day for filing notice of appeal in a criminal case is [fourteen] days following entry of judgment"). time to file appeal begins to run "after the judgment . . . is entered).

The Court notes that the defendants filed a notice of appeal on May 1, 2012. That notice is premature and may be ineffectual. *See* Fed. R. App. P. 4(b)(2) (allowing premature notices of appeal only when filed “after” the announcement of a sentence but before judgment is entered). It also appears to be limited to the jury verdict, which may preclude review of the decisions on pretrial motions. *See United States v. Paull*, 551 F.3d 516, 532 (6th Cir. 2009) (Griffin, J., concurring in part and dissenting in part).

Accordingly, it is **ORDERED** that the defendants’ motion for an extension of time to file notice of appeal [dkt. #77] is **DENIED**.

s/David M. Lawson
DAVID M. LAWSON
United States District Judge

Dated: May 4, 2012

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on May 4, 2012.

s/Deborah R. Tofil
DEBORAH R. TOFIL